

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

FAUSTO BONIFAZ,

Defendant.

\* \* \* \* \*

\* Case No. 14-CR-00575 (RJD)

\* Brooklyn, New York

\* March 17, 2015

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE STEVEN M. GOLD  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

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For the Defendant:

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1 (Proceedings commenced at 2:29 p.m.)

2 THE CLERK: The Honorable Steven M. Gold presiding.  
3 Criminal cause for guilty plea, *United States of America*  
4 *versus Fausto Bonifaz*, Docket No. 14-CR-575 RJD. Counsel,  
5 please say your appearances for the record.

6 MS. DEMAS: Good afternoon, Your Honor. Tiana  
7 Demas for the government.

8 THE COURT: Ms. Demas.

9 MR. GRECO: Good afternoon, Judge. Jeff Greco, G-  
10 r-e-c-o, for Mr. Bonifaz.

11 MR. DE MARIA: And Daniel DeMaria, Your Honor, for  
12 Mr. Bonifaz.

13 THE COURT: All right. Have a seat. Do I see an  
14 executed copy of the -- the original plea agreement?

15 MR. GRECO: Yes, Your Honor.

16 THE COURT: Can you hand it up, please?

17 MR. GRECO: Yes, Your Honor.

18 THE COURT: Thank you. I take it this is the same  
19 document that the government has previously forwarded to me?

20 MS. DEMAS: Yes, Your Honor. It is.

21 THE COURT: Thank you. Mr. Bonifaz, do you speak  
22 and understand English?

23 THE DEFENDANT: Yes, I do, sir.

24 THE COURT: He can -- he can remain seated, but I'd  
25 like you to pull the microphone in front of him. A little

1 closer to him, Mr. Greco. Thank you.

2 MR. GRECO: Yes, Your Honor.

3 THE COURT: Mr. Bonifaz, the reason you're in my  
4 courtroom today is that your lawyer indicates that you wish  
5 to surrender your right to trial and that -- and you instead  
6 want to enter a plea of guilty pursuant to the terms of a  
7 written plea agreement you've entered into with the  
8 prosecution.

9 Before I may hear any plea of guilty that you  
10 choose to offer, I need to make sure that you understand that  
11 I'm not the judge who is presiding over your case. The judge  
12 presiding over your case is United States District Judge  
13 Dearie. Maybe you've had the opportunity to appear before  
14 Judge Dearie at an earlier stage of your case. Judge --

15 THE DEFENDANT: I believe once, Your Honor.

16 THE COURT: Judge Dearie is the one who is going to  
17 decide whether any plea of guilty you do decide to offer  
18 today should be accepted, and if it is, how your sentence  
19 should be determined.

20 If you wish, you have the absolute right to present  
21 any guilty plea you want to make to Judge Dearie instead of  
22 to me. If that's your preference, there will be no prejudice  
23 to you. You will be permitted to enter your guilty plea in  
24 front of Judge Dearie on another day that is convenient to  
25 His Honor.

1 In the alternative though, although I'm not  
2 authorized by law as a magistrate judge to formally accept  
3 your plea of guilty, I do have the authority to be the judge  
4 who hears your guilty plea.

5 And if you make that choice, I will arrange for  
6 this entire proceeding to be recorded and transcribed so that  
7 Judge Dearie has a complete written record of everything you  
8 and I have said to each other before he is called upon to  
9 decide whether to accept your plea or what your sentence  
10 should be.

11 So you could either decide to go in front of Judge  
12 Dearie on another day with no prejudice to you, same terms  
13 and conditions you're being offered now on another day  
14 convenient to Judge Dearie, or you could present your guilty  
15 plea to me.

16 I cannot formally accept it, because I'm not a  
17 district judge like Judge Dearie, but I'll create a  
18 transcript of everything that was said and that transcript  
19 will be reviewed by Judge Dearie.

20 Do you understand everything I've said?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: Do you want to give up your right to  
23 have Judge Dearie be the judge who listens to you plead  
24 guilty and do you agree to present your guilty plea instead  
25 to me?

1 THE DEFENDANT: Yes, I do, Your Honor.

2 THE COURT: Are you making this decision  
3 voluntarily and of your own free will?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: Have you been threatened or pressured  
6 or promised anything in order to get you to agree to this?

7 THE DEFENDANT: No, I have not.

8 THE COURT: Can you see this consent form from  
9 where you are sitting?

10 THE DEFENDANT: Yes, I can.

11 THE COURT: Did you read this form and review it  
12 carefully with your attorneys and then sign it?

13 THE DEFENDANT: Yes, I did.

14 THE COURT: Do you have any questions about it?

15 THE DEFENDANT: I do not.

16 THE COURT: Mr. Greco, will you be the one up --  
17 speaking to the Court on behalf of your client today?

18 MR. GRECO: Yes, Your Honor.

19 THE COURT: Do you know of any reason why your  
20 client should not consent to proceed before me?

21 MR. GRECO: No, I do not, Judge.

22 THE COURT: Ms. Demas, my reading of the indictment  
23 suggests that there is a real victim to this crime. Has  
24 appropriate victim notification of today's proceeding been  
25 made?

1 MS. DEMAS: Yes, Your Honor. Victim notification  
2 has actually been made to three victims.

3 THE COURT: Thank you. Just one second, please.

4 (Pause.)

5 THE COURT: Mr. Bonifaz, before I may recommend  
6 that Judge Dearie accept any plea of guilty you choose to  
7 offer today, I have to ask you a very long series of  
8 questions.

9 THE DEFENDANT: Understood.

10 THE COURT: The questions are very important.  
11 They're designed to make sure that you understand what a  
12 serious decision you're about to make. They are also  
13 designed to create a record that will protect the prosecution  
14 and the Court, because that record will demonstrate that I  
15 explained your rights to you, you acknowledged that you  
16 understood what your rights were, and you agreed voluntarily  
17 to surrender them.

18 It's, therefore, very important that you listen  
19 carefully to my questions and don't just answer them without  
20 understanding them to get this over with. If I ask you  
21 anything and you're not sure what I mean, just stop me and  
22 tell me, and I will try to ask it again and make it clearer.

23 If you want to interrupt me for any reason during  
24 this proceeding -- maybe you want to ask me a question, maybe  
25 you want to talk privately with your attorney, it's fine.

1 Just go ahead and I'll give you the opportunity to either ask  
2 your question of me or to speak privately with your lawyer.

3 THE DEFENDANT: I will. Thank you.

4 THE COURT: Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: It's so important you tell the truth  
7 today that I'm going to direct that you be placed under oath  
8 before we proceed. So now you have to rise.

9 (The defendant is sworn.)

10 THE COURT: You may be seated. Now that you have  
11 taken an oath, when you answer my questions, you do so  
12 subject to the penalties of perjury or making a false  
13 statement. That means that if you don't tell the truth in my  
14 courtroom today, if you lie to me, new criminal charges could  
15 be brought against you just for that.

16 THE DEFENDANT: I understand.

17 THE COURT: Are we clear?

18 THE DEFENDANT: I understand.

19 THE COURT: State your full name.

20 THE DEFENDANT: Fausto Bonifaz.

21 THE COURT: How old are you?

22 THE DEFENDANT: Thirty-nine.

23 THE COURT: How much schooling have you had?

24 THE DEFENDANT: College.

25 THE COURT: Did you graduate from college?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: In the United States?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is English your native language?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you having any difficulty  
7 understanding or hearing me today?

8 THE DEFENDANT: No, I am not.

9 THE COURT: Are you now, or have you in recent  
10 months, been seeing a doctor, psychiatrist, or other  
11 healthcare professional for any physical, mental, or  
12 emotional problems?

13 THE DEFENDANT: No, I have not.

14 THE COURT: In the last 24 hours, have you taken  
15 any narcotics, drugs, medicine, pills, or alcohol?

16 THE DEFENDANT: No. I have not.

17 THE COURT: Have you ever in your life been  
18 hospitalized or treated for drug or alcohol abuse or mental  
19 or psychiatric problems?

20 THE COURT: No, I have not.

21 THE COURT: Is your mind clear today?

22 THE DEFENDANT: Yes, it is.

23 THE COURT: Do you feel healthy, focused, and  
24 alert?

25 THE DEFENDANT: I do. Nervous.



1 THE COURT: Sure. But natural nervous or  
2 nervous --

3 THE DEFENDANT: Yeah.

4 THE COURT: -- where you can't concentrate?

5 THE DEFENDANT: Natural, sir.

6 THE COURT: Are you understanding everything that's  
7 going on?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: Counsel, have you filed a notice that  
10 you're retained in this matter?

11 MR. GRECO: Yes, Your Honor, I have.

12 THE COURT: You filed a notice of appearance?

13 MR. GRECO: I have, Your Honor.

14 THE COURT: And you're a member of our -- the bar  
15 of our court?

16 MR. GRECO: I am, Judge.

17 THE COURT: Have you discussed the matter of  
18 pleading guilty carefully with your client, Mr. Greco?

19 MR. GRECO: Numerous times, Your Honor.

20 THE COURT: Does he, in your judgment, understand  
21 the rights he'll be waiving if he tenders a plea of guilty?

22 MR. GRECO: Yes, Your Honor. He does.

23 THE COURT: Is he capable of understanding the  
24 nature of this proceeding in your judgment?

25 MR. GRECO: Yes, Your Honor.

1 THE COURT: Do you have any doubt about his  
2 capacity to enter a plea of guilty at this time?

3 MR. GRECO: No, I do not, Judge.

4 THE COURT: Have you alerted your client to the  
5 maximum and minimum sentence and fine that might be imposed,  
6 the likely operation of the sentencing guidelines as best you  
7 can anticipate it, the restitution that the government may be  
8 seeking on behalf of victims in this case, and the collateral  
9 consequences of his conviction as well?

10 MR. GRECO: I have gone over all those things, Your  
11 Honor.

12 THE COURT: Thank you. Mr. Bonifaz, have you had  
13 enough time to go over your case very carefully with your  
14 lawyers, and have you done that?

15 THE DEFENDANT: Yes, I have, Your Honor.

16 THE COURT: I want to make sure you understand that  
17 if you could not afford your lawyers' fees anymore and you  
18 demonstrated that to my satisfaction, I would appoint a  
19 lawyer, an experienced criminal defense lawyer, to defend you  
20 at no cost to you.

21 You should not plead guilty because you think it's  
22 a way of avoiding legal fees that you might not be able to  
23 afford. Do you understand me?

24 THE DEFENDANT: Yes. Thank you, Your Honor.

25 THE COURT: Are you satisfied to be represented by

1 the attorneys who have been defending you so far and who are  
2 beside you in your -- in the courtroom today?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: You have been satisfied?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you want to continue with them as  
7 your lawyers?

8 THE DEFENDANT: Correct.

9 THE COURT: Have you received a copy of the  
10 indictment? That's the document where the various criminal  
11 charges against you are set forth in writing?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you reviewed that indictment very  
14 carefully with your attorneys?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Your plea agreement indicates -- are  
17 you looking for a copy of it to go over with him? I'll give  
18 you a minute to find it.

19 (Pause.)

20 THE COURT: Your plea agreement indicates that you  
21 wish to plead guilt -- guilty to Count 1 of the indictment.  
22 And that's what I'm going focus your attention on right now.

23 THE DEFENDANT: That is correct, Your Honor.

24 THE COURT: In that charge, you're accused of  
25 committing a crime between September of 2009 and November of

1       2010. Do you need a copy of the indictment, Counsel? Ms.  
2       Demas is offering to provide you with one.

3               MR. GRECO: I've got one, Judge, but to save the  
4       Court time. Thank you.

5               THE COURT: Thank you, Mr. Greco. Thank you, Ms.  
6       Demas.

7               In Count 1, you're charged with committing a crime  
8       between September of 2009 and November of 2010.

9               The crime you're charged with committing in that  
10       count is knowingly and intentionally persuading or inducing  
11       or enticing or forcing someone under 18, someone whose  
12       identity is known to the grand jury, knowingly and  
13       intentionally persuading, enticing, or forcing that  
14       individual to engage in sexual activity that is criminalized  
15       under the United States Code in a section addressing sexual  
16       abuse of a minor, and doing so at a location that is within  
17       the territorial jurisdiction of the United States, or more  
18       specifically, the Army base at Fort Hamilton in Brooklyn, New  
19       York.

20               Do you understand what you're accused of in Count 1  
21       of this indictment?

22               THE DEFENDANT: Yes, I do, Your Honor.

23               THE COURT: You have a right to plead not guilty or  
24       stand on and persist in any not guilty plea you may have  
25       previously entered to these and the other charges pending

1 against you. That's your right, even if you committed this  
2 crime.

3 Every defendant, whether he is guilty or not, has  
4 the right to plead not guilty. And pleading not guilty is  
5 never lying or misleading the Court, even if you are, in  
6 fact, guilty of the offenses.

7 Every defendant has the plea to right -- plead --  
8 has the right to plead not guilty, because that is the way a  
9 defendant in our system exercises his constitutional right to  
10 a trial. Do you understand that?

11 THE DEFENDANT: Yes, I do, Your Honor.

12 THE COURT: If you were to persist in your  
13 previously entered not guilty pleas, or plead not guilty  
14 today, then under the constitution and laws of the United  
15 States you would be entitled to a speedy and public trial by  
16 a jury with the assistance of your attorneys, not only at the  
17 trial but at all stages of the tri -- of the case against  
18 you, and not only on Count 1, but on all of the charges  
19 pending against you. Is this clear to you?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: At your trial, you would be presumed to  
22 be innocent. The prosecution would be required to overcome  
23 this presumption of innocence and to prove that you were  
24 guilty by competent evidence and beyond a reasonable doubt.

25 You would not have to prove that you were innocent

1 at the trial. If the prosecution failed to prove that you  
2 were guilty beyond a reasonable doubt, the members of the  
3 jury would have the duty to return a verdict of not guilty,  
4 and Judge Dearie would instruct them accordingly. Did you  
5 follow that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: That's why sometimes jurors find  
8 defendants not guilty even though the members of the jury  
9 think the defendant probably did commit the crimes of which  
10 he stands accused.

11 When a jury returns a verdict of not guilty, it's  
12 not necessarily because the jurors believe the defendant is  
13 innocent. Jurors are instructed that they must return a  
14 verdict of not guilty unless they are convinced beyond a  
15 reasonable doubt that the defendant is, in fact, guilty. Do  
16 you understand that?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: If you decided to proceed to a trial,  
19 the prosecutor's witnesses would be required to come into the  
20 courtroom and to present their testimony against you right in  
21 front of you and your attorneys.

22 Your attorneys would have the right to question the  
23 prosecution witnesses on cross examination. Your attorneys  
24 would have the right to raise objections to evidence that the  
25 prosecutor attempted to offer against you.

1           And you and your attorneys, working together, would  
2           have the right to call witnesses, present evidence other than  
3           testimony, and make arguments in your defense to the jury all  
4           during the course of the trial.

5           In fact, you could even issue subpoenas requiring  
6           people you wanted to testify to come to court and testify in  
7           your defense. Do you understand all of that?

8           THE DEFENDANT: Yes, I do, Your Honor.

9           THE COURT: At your trial, you yourself would have  
10          the right to be a witness in your own defense and testify in  
11          your case if that was the choice you made.

12          On the other hand, no one could require you to  
13          testify at your trial. That's because the Constitution of  
14          the United States provides that no one may be required to say  
15          anything that is self-incriminating.

16          If you decided that your choice was not to testify  
17          at all at your trial, Judge Dearie would instruct the members  
18          of the jury that they could not take your silence, your  
19          decision not to testify, into account or hold it against you  
20          in any way when they decided upon their verdict. Is that  
21          clear to you?

22          THE DEFENDANT: Yes, Judge, it is.

23          THE COURT: On the other hand, if you tender a  
24          guilty plea in my courtroom this afternoon and Judge Dearie  
25          accepts it, you will as a result be surrendering your

1 constitutional right to trial and all of the other rights  
2 I've been describing to you today.

3 There will be no further trial of any kind in your  
4 case after today. You'll have no right to appeal from the  
5 conviction that will follow from your guilty plea if you make  
6 one today. Judge Dearie will essentially convict you and  
7 find you guilty based upon your admissions during the  
8 proceeding that we are holding right now. And that will free  
9 the prosecution of its responsibility to prove what you did.  
10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: If you decided that instead of pleading  
13 guilty you wanted to go to trial and if at that trial you  
14 were convicted by a jury's verdict, then you would have the  
15 right to take an appeal to a higher court and ask that higher  
16 court -- we call it the Court of Appeals -- to review the  
17 legality of all of the proceedings that led up to your  
18 conviction.

19 But when you enter a plea of guilty, you are in  
20 essence substituting your own words for the jury's verdict.  
21 Instead of asking the jury whether to find you guilty or not,  
22 you're essentially admitting that you are guilty.

23 And when you do that, you give up your right to  
24 bring an appeal, or legal challenge to the conviction or  
25 guilty judgment that is entered against you as a result. Do



1       you understand that?

2               THE DEFENDANT: Yes, I do, Your Honor.

3               THE COURT: If you plead guilty, I'm going to have  
4 to ask you questions about what you did, so that Judge Dearie  
5 and I can be satisfied that your guilty plea is based on  
6 facts that really took place.

7               You do not have to answer those questions unless  
8 you want to go forward with your guilty plea. If you do  
9 answer them and you admit your involvement in criminal  
10 activity, you will as a result be surrendering your  
11 constitutional right not to say anything that is self-  
12 incriminating. Do you understand me?

13              THE DEFENDANT: Yes, I do, Your Honor.

14              THE COURT: Do you still want to give up your right  
15 to trial and all the other rights I've been describing to you  
16 today?

17              THE DEFENDANT: I want to ask two questions,  
18 actually, now that I'm actually looking at the count itself.

19              THE COURT: Do you want to ask them of me or of  
20 your lawyer privately?

21              THE DEFENDANT: I'd rather ask you --

22              THE COURT: Okay.

23              THE DEFENDANT: -- if you don't mind. The first  
24 one was regarding the first opening comment about the  
25 victims. I'm stating from the beginning that there is only

1 one.

2 THE COURT: In Count 1.

3 THE DEFENDANT: Correct. And the second one, I'm  
4 reading in between the language they're saying of persuading,  
5 inducing, enticing, coerce.

6 From my understanding -- unless I'm incorrect and  
7 please clarify if I need it -- my understanding is that it's  
8 because of the age that it's understood that it -- it was  
9 done that way.

10 But I am sticking firmly there was a mutually  
11 consenting situation.

12 THE COURT: Ms. Demas, do you care to address the  
13 Court with respect to the legal issues raised by the  
14 defendant's questions?

15 MS. DEMAS: Your Honor, I think with respect to  
16 question number one, that was in response to my comment about  
17 victim notification. This office is obligated to notify  
18 victims. I understand and -- that the defendant contends  
19 that there was only one victim. The indictment contains  
20 three.

21 For purposes of the plea, it's immaterial because  
22 he's only pleading to one charge. The only place where it  
23 comes into play is in the guidelines calculation and the  
24 defendant has not stipulated to the guidelines calculation.  
25 He's, therefore, preserving the right at sentencing to

1 challenge that guidelines calculation and, specifically, the  
2 presence of multiple victims really only adds anything in the  
3 grouping analysis, and that is in the plea agreement at page  
4 four.

5 I have discussed this at length with the  
6 defendant's attorney. My understanding is that the  
7 defendant's attorney has discussed this at length with the  
8 defendant, and there is nothing in the plea agreement wherein  
9 the defendant is stipulating or pleading to three victims.  
10 So I think that satisfies that issue.

11 With respect to the allocution or the language of  
12 the indictment, I mean, the language is what it is. A person  
13 between the age of 12 years and 16 years is not capable of  
14 legally consenting. So, but the language of the statute is  
15 what it is. It says --

16 THE COURT: Well, but is it the government's  
17 position that the legal requirement of persuasion,  
18 inducement, enticement, or coercion is satisfied when someone  
19 who is over 20 years old has a consensual sexual relationship  
20 with someone who is 12 to 16 years old? I say over 20,  
21 because the statute requires --

22 MS. DEMAS: Right.

23 THE COURT: -- that the accused partner be at least  
24 four years older than the alleged victim.

25 MS. DEMAS: That's correct, Your Honor.

1 THE COURT: So you are in essence agreeing with the  
2 legal proposition that the age difference is sufficient to  
3 satisfy the elements of the offense?

4 MS. DEMAS: Yes. And I would note that one of the  
5 words, persuade -- I don't know that the defendant has an  
6 issue with that word.

7 It's the -- the indictments, our indictments, as  
8 the Court knows but the defendant may not, are always phrased  
9 with an "and," whereas the statute itself is in the  
10 disjunctive. So as long as the defendant can say that he  
11 persuaded, I think that solves the issue in a very clean way.

12 THE COURT: All right. Well, let me try to  
13 summarize what I -- unless -- unless, Mr. Greco, you wish to  
14 be heard further on any of --

15 MR. GREGO: Judge, the --

16 THE COURT: -- these points?

17 MR. GRECO: I'm sorry, Judge.

18 The only thing I would add is that pursuant to what  
19 Ms. Demas was saying, I have gone over this with my client.  
20 He understands that he may not necessarily be in agreement to  
21 some of the issues that he's raised, but I have gone over it  
22 --

23 THE COURT: Okay.

24 MR. GRECO: -- at length as to why there is a  
25 rebuttal presumption that if a victim is under a certain age

1 and he's older than four years, as Your Honor has pointed  
2 out, then there is a presumption that it was induced,  
3 persuaded, and so forth, as the indictment alleges.

4 THE COURT: Okay. So what the -- let me make sure  
5 that Mr. Bonifaz understands everything that was just said --

6 THE DEFENDANT: Thank you.

7 THE COURT: -- and agrees with it.

8 First of all, the government is going to argue to  
9 the Court, or at least reserves the right to argue to the  
10 Court, that there were more than one victim -- there was more  
11 than one victim. There were multiple victims of what you  
12 did, and that your sentence should be longer because of it.

13 You have the right at your sentencing to argue that  
14 there was only one victim and that the government's proof  
15 about the other victims is in an insufficient basis and wrong  
16 as a matter of fact, and that you shouldn't receive a longer  
17 sentence because of it.

18 And that's the current state of affairs under which  
19 you're being asked to decide whether to plead guilty or not.

20 THE DEFENDANT: Thank you.

21 THE COURT: Are we clear on that?

22 THE DEFENDANT: Yes. Thank you, Your Honor.

23 THE COURT: Second, what your lawyer has described  
24 -- and I don't know the legal answer to this question, but it  
25 sounds correct to me -- that there is a presumption.

1           A presumption that because of the age difference  
2           you are liable or legally responsible under our criminal law  
3           for persuading or inducing or enticing someone at least four  
4           years younger than you, who is also under 18, of having the -  
5           - of engaging in the sexual activity that I imagine I'm going  
6           to hear more about later.

7           When your lawyer describes it as a rebuttable  
8           presumption, I think what he is suggesting is that the  
9           government need not do any more than prove the fact of the  
10          age difference and the fact that the sexual contact took  
11          place to establish its case, but that you would have the  
12          right at the trial to try to prove that everything was  
13          consensual. But I presume your lawyer would advise you that  
14          that would require the victim's cooperation. I use the term  
15          victim, meaning the person with whom the sexual contact was  
16          had.

17                 Mr. Grego, have I done justice to your concept?

18                 MR. GRECO: Yes, Your Honor, you have.

19                 THE COURT: Mr. Bonifaz, do you understand what  
20                 I've said?

21                 THE DEFENDANT: Yes. Thank you, Your Honor.

22                 THE COURT: Do you want to go forward?

23                 THE DEFENDANT: Yes, Your Honor.

24                 THE COURT: Do you have any other questions at this  
25                 time?

1 THE DEFENDANT: No. I just wanted to clarify that.  
2 Thank you.

3 THE COURT: You're welcome. I think I'm not  
4 exactly sure where I stopped, so I am going to go back a  
5 little bit over some ground I already covered to make sure I  
6 don't skip anything.

7 What I was saying to you when you asked your  
8 question was that if you do plead guilty, I'm going to have  
9 to ask you questions about what happened. I told you you  
10 don't have to answer those questions unless you want to go  
11 forward with your guilty plea, but that if you do, you'll be  
12 surrendering your constitutional right to remain silent and  
13 not incriminate yourself.

14 And I wanted to make sure that you understood that  
15 by explaining to me what happened, which is part of pleading  
16 guilty, you are surrendering that constitutional right not to  
17 be self-incriminating. Do you understand that?

18 THE DEFENDANT: Yes. I do understand.

19 THE COURT: Do you still want to give up your right  
20 to trial and all the other rights I've been describing to you  
21 today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: I understand that you're making the  
24 decision pursuant to the terms of a written plea agreement.  
25 The original copy of that agreement has been marked as

1 Court's Exhibit 1 and I'm going to ask my clerk to give it to  
2 your lawyer so you can look at the original with me.

3 (Pause.)

4 THE COURT: Do you have Court Exhibit 1 before you  
5 now?

6 THE DEFENDANT: Yes, I do, Your Honor.

7 THE COURT: Does your signature appear upon the  
8 last page?

9 THE DEFENDANT: Yes, it does.

10 THE COURT: Before you signed it, did you read it?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: Did you go over it very carefully with  
13 your attorney?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: Did you understand what you signed?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you have any questions about  
18 anything the agreement says that you want to ask me or review  
19 with your attorneys before you go forward?

20 (Pause.)

21 THE DEFENDANT: If it was possible, I wanted just a  
22 bit of a clarification on one of the add-ons to the initial  
23 count.

24 THE COURT: I'm -- can you point me to a page --

25 THE DEFENDANT: Sure.



1 THE COURT: -- that you're looking at?

2 THE DEFENDANT: It would be page three.

3 THE COURT: Mm-hmm.

4 THE DEFENDANT: And it's referring to 2G1.3(b)(4).

5 THE COURT: Mm-hmm.

6 THE DEFENDANT: I just want to know from your  
7 perspective what does that refer to?

8 THE COURT: I honestly don't have a perspective on  
9 that, but we can get out the Guidelines Manual and read you  
10 the provision. Or I say we, but what I'm really counting on  
11 is Ms. Demas.

12 THE DEFENDANT: The reason that I ask this question  
13 is because it seems to me that if I'm accepting this count,  
14 that particular line seems almost redundant. It's kind of  
15 like saying if I'm doing this, this is what I'm doing. And  
16 it doesn't seem correct to me.

17 THE COURT: I understand what you're saying. Could  
18 you start by reading us the text?

19 MS. DEMAS: Sure, Your Honor. 2G1.3 of the  
20 guidelines, subsection (b)(4) provides that, "If the offense  
21 involved the commission of a sex act or sexual contact, or  
22 subsect -- or (B) subsection (a)(3) or (a)(4) applies and the  
23 offense involved a commercial sex act, increase by 2 levels."

24 I think perhaps it would be helpful for the  
25 defendant to understand that this is the guidelines

1 calculation. The guidelines -- the way that the guidelines  
2 are written is that, you know, for 2G1.3 it covers a number  
3 of offenses. So while from the defendant's perspective it  
4 may seem that by pleading guilty to an offense that involves  
5 sexual contact, he is already admitting to that.

6 For guidelines purposes, it is relevant and that's  
7 why it's in here.

8 THE COURT: Well, let me ask -- I -- I have a  
9 question that's --

10 MS. DEMAS: Yes.

11 THE COURT: -- triggered by the defendant's that  
12 may -- may more accurately reflect what's concerning him.

13 I think the question that he is asking may also be  
14 understood as whether it's the government's position that  
15 (b) (4) and (b) (2) involves separate enhancements from the  
16 level 28 offense level and what those -- what each  
17 enhancement is for that isn't captured by the (c) (3) offense  
18 and why they're different from each other.

19 MS. DEMAS: Okay. Let me just make sure -- let me  
20 make sure I understand the --

21 THE COURT: Okay.

22 MS. DEMAS: -- the question. Okay.

23 THE COURT: Do you want me to rephrase it?

24 MS. DEMAS: I -- no. I think I understand. Okay.  
25 So starting with the offense level, that covers the statute

1       that he is convicted under.

2               THE COURT: Right.

3               MS. DEMAS: And that statute has a -- a number of  
4 different things that one may do to satisfy it. So --

5               THE COURT: To violate it.

6               MS. DEMAS: To violate it.

7               THE COURT: Yes.

8               MS. DEMAS: Right. Excuse me. Sorry. And I'm  
9 sorry, Your Honor, I did not bring my statute book, but had  
10 it -- if I had it in front of me, the Court would note that  
11 there are a number of different sections.

12              THE COURT: Yes.

13              MS. DEMAS: It's the coercion and entitement [sic]  
14 -- enticement statute, and one of them is using a telephone  
15 line or a computer.

16              What the defendant is specifically charged with is  
17 committing a violation of engaging in sexual activity for  
18 which a person can be charged with a criminal offense, which  
19 is sexual abuse of a minor. And that appears in Section  
20 2243(a). And the jurisdictional hook is that it occurred at  
21 the Fort Hamilton Army Base. So that's what leads us to 28.

22              Now, the question is: What is the basis for the  
23 enhancement two -- I'm sorry -- for the enhancement under  
24 (b) (2)?

25              THE COURT: Mm-hmm.

1 MS. DEMAS: And that is that if one looks at the  
2 advisory notes to Section (b)(2), that explains my thinking  
3 at the time that I wrote this and it is -- excuse me. So in  
4 determining whether this applies -- and again, this is a  
5 guidelines calculation. It's not binding. "The court should  
6 closely consider the facts of the case to determine whether a  
7 participant's influence over the minor compromised the  
8 voluntariness of the minor's behavior. The voluntariness of  
9 the minor's behavior may be compromised without prohibited  
10 sexual act occurring."

11 So in my mind, that enhancement applies whether or  
12 not sexual contact occurs and it's a function of the  
13 defendant's relationship with the minor.

14 I can go into details as to the reasoning here that  
15 I think it applies, but --

16 THE COURT: I think that will distract us --

17 MS. DEMAS: Okay.

18 THE COURT: -- from the more abstract question --

19 MS. DEMAS: Sure.

20 THE COURT: -- that was asked. And -- and -- so,  
21 in other words, the (b)(2) I think may be fairly said to  
22 reflect the level of influence attributed to the defendant --

23 MS. DEMAS: Exactly.

24 THE DEFENDANT: -- over the minor.

25 MS. DEMAS: Yes.

1 THE COURT: And the (b)(4) enhancement may be  
2 attributed to the fact that sexual contact --

3 MS. DEMAS: That a sex act --

4 THE COURT: -- occur -- a sex act occurred.

5 MS. DEMAS: Yes, Your Honor.

6 THE COURT: Right. And sexual --

7 MS. DEMAS: Or sexual contact. Sorry.

8 THE COURT: Yes. Do you understand the difference  
9 now?

10 THE DEFENDANT: Yes, I do, Your Honor.

11 THE COURT: I also want to point out to you, even  
12 more clearly than Ms. Demas has -- and I will say that was a  
13 very clear explanation of a complicated set of interlocking  
14 concepts -- that the underlying statute that gets you to the  
15 28 levels -- now we have to see if I'm remembering it  
16 correctly -- covers a variety of things that an adult --  
17 excuse me -- that anyone might be coerced or persuaded to do.  
18 Not all of which involve a minor. Not all of which involve  
19 sexual contact.

20 And that's why the level 28 does not fully, in the  
21 view of the drafters of the guidelines as best we can discern  
22 it, does not fully encompass the scope of the criminal  
23 conduct that the prosecution attributes to you. Did -- did  
24 you follow that?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: Okay. Do you have any more questions  
2 about it?

3 THE DEFENDANT: No. And I really appreciate it.  
4 Thank you very much, sir.

5 THE COURT: Well, it's a fair -- it's a very fair  
6 question and it's not an easy thing even for people who work  
7 with these guidelines every day to grab and explain. So I'm  
8 glad you felt comfortable to ask it.

9 Once again, I've sort of lost my thread, so I'm  
10 going to go back a few steps.

11 I think I showed you your plea agreement and I  
12 asked you if you had any questions about it that you wanted  
13 to ask me or discuss privately with your attorney.  
14 Obviously, you've asked one.

15 Do you -- or a group of questions. Do you have any  
16 others you want to raise?

17 THE DEFENDANT: No, I don't, Your Honor.

18 THE COURT: Is everything in the agreement clear to  
19 you now?

20 (Pause.)

21 THE DEFENDANT: I was made aware that in page four  
22 -- sorry, give a reference on this. In the imposition of the  
23 sentence --

24 THE COURT: Yes.

25 THE DEFENDANT: -- the range is from 151 to 188.

1 THE COURT: Yes.

2 THE DEFENDANT: But still it's stating that it is  
3 210. Right above from the 168 to the 210 --

4 THE COURT: Mm-hmm.

5 THE DEFENDANT: -- and from my understanding it  
6 basically means that if there was any kind of imposition of a  
7 sentence that goes beyond or to the 210 itself, I have no  
8 right to make a plea against that.

9 THE COURT: That's correct. I see -- go ahead, Ms.  
10 Demas.

11 MS. DEMAS: Your Honor, I just -- I have a  
12 different version of the plea agreement, but I do want to  
13 make sure that the guilty plea date is today, or at least a  
14 date after today, so --

15 THE COURT: Mr. Greco, do you have the -- you have  
16 the original out and Ms. Demas and I are looking at drafts.

17 THE DEFENDANT: Yes. It says March 6.

18 THE COURT: It says --

19 MS. DEMAS: Okay.

20 THE COURT: -- March 6?

21 MS. DEMAS: So -- so we should change it to March  
22 17th.

23 THE COURT: Yes. So that has to be -- if you could  
24 just pen in March 17th and you and the defendant initial it,  
25 we'll cover up that little technical glitch.

1           Here is the best way I can explain or the best way  
2           I can answer your question. And I'm going to talk to you  
3           about the guidelines in greater detail a little bit later.  
4           But here is the way I understand it and I'm going to ask Ms.  
5           Demas to correct me if I'm wrong.

6           The government will give you an estimate of the  
7           guideline range that they've calculated, but they're asking  
8           you, as part of the plea agreement, to waive your right to  
9           challenge the sentence even if it's one notch up from the  
10          guideline range they've estimated.

11          So they've calculated a guideline range of 151 to  
12          188 assuming your plea goes through.

13          THE DEFENDANT: Correct.

14          THE COURT: But as part of the deal, if you will,  
15          the negotiation that went on between you and the prosecution,  
16          they're asking you to waive your right to appeal if you  
17          receive a sentence of 210 months or less. And that's the  
18          proposition that's being offered to you.

19          Is that fair, Ms. Demas?

20          MS. DEMAS: That's correct, Your Honor. And as I  
21          explained to Mr. Bonifaz's counsel, that's our office's  
22          policy. We always tie the appellate waiver to the top of the  
23          guidelines level minus that last acceptance point. And the  
24          reason for that is oftentimes Probation or the Court may end  
25          up estimating the guidelines level higher. So --



1 THE COURT: Or deciding that the guilty plea  
2 doesn't satisfy the acceptance of responsibility point.

3 MS. DEMAS: True. Both of those things. So that's  
4 the reasoning.

5 I'm sure Mr. Bonifaz's attorney can explain that in  
6 -- for practical purposes, it probably won't make a  
7 difference. But that's not my role --

8 THE COURT: No.

9 MS. DEMAS: -- here.

10 THE COURT: Nor the Court's. Did you understand?

11 THE DEFENDANT: I do understand that. But if I'm  
12 pleading and everything goes according to the point system  
13 that works it out down to the actual 188, I should still have  
14 the opportunity to have some sort of a -- to make any -- a  
15 comment regarding the fact why we go beyond that.

16 THE COURT: Well, I'm going to go into this in more  
17 detail in a minute --

18 THE DEFENDANT: I'm sorry if I'm jumping the gun --

19 THE COURT: No.

20 THE DEFENDANT: -- on that.

21 THE COURT: That's -- that's fine. I want --

22 THE DEFENDANT: It's just today is about --

23 THE COURT: -- I want you to -- this is the prob --  
24 one of the most significant days of your life and I want you  
25 to understand everything.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: But here is the way I would put it to  
3 you. At your sentence, you'll have the right to tell Judge  
4 Dearie whatever is on your mind. And you and your lawyer can  
5 argue that even the 188 is too high. And they can say, if  
6 there is a good faith basis for saying it, that the  
7 government's guidelines calculation is too great.

8 Judge Dearie will then make a decision after  
9 listening to you patiently and carefully, I have no doubt.  
10 But if the decision is 210 months or less, you can't appeal  
11 from it and raise a legal challenge in another court.

12 And that's just one of the prices you have to pay  
13 to get the benefit of pleading guilty to one count instead of  
14 additional counts in the indictment or going to trial.  
15 Because that's the best offer the government is making you.

16 THE DEFENDANT: Understood.

17 THE COURT: Okay.

18 THE DEFENDANT: Yes.

19 THE COURT: Do you still want to go forward?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. Is everything else in the plea  
22 agreement clear to you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did anyone pressure you or threaten you  
25 or force you to sign it?

1 THE DEFENDANT: Nobody did.

2 THE COURT: Did anybody promise you anything that's  
3 not written down in the agreement and not stated here in open  
4 court today in return for your guilty plea?

5 THE DEFENDANT: No. They have not.

6 THE COURT: We've already been over -- I'd like the  
7 original back at this point, please. Do you have another  
8 copy to look at?

9 MR. GRECO: I do have --

10 THE DEFENDANT: We have, Your Honor.

11 MR. GRECO: -- I do have copies of the plea  
12 agreement --

13 THE COURT: Great.

14 MR. GRECO: -- Judge.

15 THE COURT: All right. So let the record reflect  
16 that Court Exhibit 1 has been handed back to me, and that  
17 indeed as I requested, counsel and the defendant have changed  
18 the March 6th date in paragraph two on page four to March  
19 17th, put their initials by that change, and I'm adding my  
20 own. Thank you.

21 Mr. Bonifaz, we've been over the charge in the  
22 indictment in Count 1. Do you have it clearly in mind?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: I want to review with you then the  
25 penalties you'll be facing if your guilty plea goes forward.

1 Are you ready for that?

2 THE DEFENDANT: Yes, I am, Your Honor.

3 THE COURT: The crime you are accused of committing  
4 requires Judge Dearie to sentence you to prison for at least  
5 ten years and authorizes a prison term as long as the rest of  
6 your life. Do you understand me?

7 THE DEFENDANT: I do understand, Your Honor.

8 THE COURT: The statute also requires Judge Dearie  
9 to sentence you to supervised release for at least five years  
10 and authorizes the supervised release term as long as the  
11 rest of your life. Do you understand that?

12 THE DEFENDANT: I do understand, Your Honor.

13 THE COURT: Supervised release is a period of time  
14 that doesn't even start until you finish serving your prison  
15 sentence.

16 THE DEFENDANT: I realize that.

17 THE COURT: Once you've finished serving your  
18 prison term, you'll be released from prison but you won't  
19 really be completely at liberty, because although you won't  
20 be in a cell anymore, you'll be subject to what we call  
21 supervised release rules. So many I can't list them all for  
22 you today.

23 The rules will include, but not be limited to,  
24 restrictions on your right to travel freely and requirements  
25 that you regularly report to a probation officer, follow that

1 officer's instructions carefully, answer that officer's  
2 questions honestly, and commit no new crimes whatsoever while  
3 on supervised release. Is that clear?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: If you break any supervised release  
6 rule, whether in doing so you've committed a new crime or  
7 not, you could be arrested, brought back to this court, and  
8 sent back to prison for up to five more years. You'd get no  
9 credit against that five year sentence for the time you spent  
10 serving your original sentence. You'd get no credit for the  
11 time you spent at liberty with your freedom restricted by  
12 supervised release. It would be a new five year term, but on  
13 this old criminal act. Is that clear to you?

14 THE DEFENDANT: Yes, it is, Your Honor.

15 THE COURT: If you commit certain offenses  
16 specified in the plea agreement, then that violation of  
17 supervised release term sentence would have to be at least  
18 five years and could be as long as the rest of your life.  
19 And they're mostly sex crimes. Do you understand that?

20 THE DEFENDANT: Yes, I do understand, Your Honor.

21 THE COURT: A fine of up to \$250,000 may be  
22 imposed. Is that clear?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You will be required to make  
25 restitution to the victims of your crimes. That restitution

1       hasn't been measured yet. And the government will argue that  
2       there are multiple victims entitled to restitution. Is that  
3       right?

4               MS. DEMAS: That's correct, Your Honor, to the  
5       extent that the victims seek restitution.

6               THE COURT: Do you understand that, Mr. Bonifaz?

7               THE DEFENDANT: Yes, I do, Your Honor.

8               THE COURT: And that's separate and apart from any  
9       fine that might be imposed. Do you understand that?

10              THE DEFENDANT: I do, Your Honor.

11              THE COURT: A \$100 special assessment will be  
12       imposed upon you at or about the time you are sentenced as it  
13       is on every defendant's sentence to a felony. Do you  
14       understand that?

15              THE DEFENDANT: Yes, Your Honor.

16              THE COURT: Then there are a series of other  
17       penalties that flow from the nature of the offense. They're  
18       loosely called sex offender registration requirements. They  
19       may change over time. They may change between today and the  
20       time you're released from prison, but basically, you're going  
21       to have to tell the authorities where you live and what  
22       you've been convicted of, and you may have restrictions on  
23       the places you can go, like schoolyards and parks where  
24       children congregate. Do you understand that?

25              THE DEFENDANT: I do, Your Honor. I have a

1 question. My -- my wife, she is currently pregnant and we're  
2 expecting a child. And I want to know what kind of  
3 limitations will that have as an impact to me as a father for  
4 my son.

5 THE COURT: I don't know the answer to that. Does  
6 the government?

7 MS. DEMAS: I don't, Your Honor. But -- it -- and  
8 I'm hesitant to say anything, although it is not my  
9 understanding that the defendant would be prevented from  
10 having contact with his own child, if that's the question.

11 THE COURT: Mr. Greco, have you given your client  
12 any advice on that subject? And I don't want to know what it  
13 is necessarily. You can remind him of it privately if -- if  
14 you have.

15 MR. GRECO: Judge, I have gone over this with Mr.  
16 Bonifaz. He did ask that question and I did give him an  
17 explanation as to the best of my understanding with  
18 explaining to him that things could change at the time, like  
19 Your Honor mentioned --

20 THE COURT: Yes.

21 MR. GRECO: -- when they actually became applicable  
22 when he was released.

23 THE COURT: Yes. So -- I just don't know the  
24 answer to the question. If you want to adjourn today's  
25 proceeding and ask your lawyer to investigate it further, and

1 he is agreeable to that, I don't object to it. But I can't  
2 answer the question.

3 THE DEFENDANT: Would that impact this hearing and  
4 the point system or any of that at this particular moment?

5 THE COURT: I don't think the government would  
6 object to a brief adjournment if you wanted to have that  
7 question explored further before you decided whether to go  
8 forward or not. Is there a trial date?

9 MS. DEMAS: No, Your Honor. There's not a trial  
10 date.

11 THE COURT: No, it wouldn't.

12 THE DEFENDANT: The reason I'm -- was bringing that  
13 up is because obviously my family is very important to me and  
14 I want to make sure. I mean, I'm seeing like different  
15 sections in terms of what things could limit, but I don't  
16 have clarification each individual as far as how it would  
17 affect --

18 THE COURT: I don't know --

19 THE DEFENDANT: -- you know, my -- my parenthood.

20 THE COURT: -- if you're ever going to get that.  
21 It may even depend -- I don't know the answer to this -- but  
22 it could well depend on what state you end up living in.  
23 Because different states have different regulations.

24 And it may well be that although, you know, there -  
25 - there are a lot of possibilities. One is that there could



1 be a bar. The other is that there could be a bar in your  
2 being alone with the child, so that there would always have  
3 to be someone else present, another adult present.

4 Another possibility is that if it is your own  
5 biological child that there wouldn't be any restriction. I  
6 don't know the answer.

7 THE DEFENDANT: Thank you. For now, I'll continue.

8 THE COURT: Are you sure?

9 THE DEFENDANT: Yes. I just felt the need I had to  
10 ask that, because it's important to me. Thank you.

11 THE COURT: I just want to make it clear that if  
12 you want to adjourn, and the adjournment is short, and your  
13 lawyer agrees that he can be even more complete in his  
14 response to you, you would not suffer any prejudice from  
15 that.

16 THE DEFENDANT: Thank you, Your Honor. But at this  
17 point, I'll -- I'll continue.

18 THE COURT: Okay.

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: Counsel, do you see any reason why your  
21 client shouldn't continue?

22 MR. GRECO: Nothing out of personal decision,  
23 Judge. I am happy for the record to explore that issue in  
24 more detail to provide as accurate an answer as I can provide  
25 if it differs from what I've already told him. I'm happy to

1 do so at his request, but I really would have to put that  
2 ball in his court, Your Honor.

3 THE COURT: All right. Well, I think we've heard  
4 from him, so we'll go forward. And, of course, that doesn't  
5 preclude you learning more about what your rights and  
6 responsibilities will be in that regard, but you could lose  
7 the right to change your mind about pleading guilty if we  
8 complete this and -- and you learn something new that you  
9 don't like. Understood?

10 THE DEFENDANT: Thank you, Your Honor. Yes.

11 THE COURT: Okay. So I told you that there will be  
12 certain kinds of notifications and registrations you're going  
13 to be required to make because of the nature of the offense,  
14 and I think you told me you understood that. Correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Okay. Then let's talk about what we do  
17 call the sentencing guidelines, which we've already begun a  
18 discussion of. Now, these guideline -- yes, Ms. Demas.

19 MS. DEMAS: Sorry, Your Honor. I -- I do this in  
20 an abundance of caution. There is no indication that the  
21 defendant would be subject to removal or deportation.  
22 However, I've had it happen where people who I believe to be  
23 born in the United States turned out not to be. So I would  
24 just ask that the Court --

25 THE COURT: Yes. Yes.

1 MS. DEMAS: -- inform --

2 THE COURT: Yes.

3 MS. DEMAS: -- the defendant of that risk.

4 THE COURT: If you are not a United States citizen,  
5 born or naturalized, then you could be deported simply based  
6 upon your plea of guilty to this offense. Do you understand?

7 THE DEFENDANT: I understand, Your Honor.

8 THE COURT: Thank you, Ms. Demas. That's an  
9 appropriate reminder and I appreciate receiving it.

10 Now I'm going to talk to you about what we call the  
11 sentencing guidelines. You already know a lot about them.

12 The sentencing guidelines are going to be  
13 calculated by Judge Dearie. They're going to provide him  
14 with a range of months, which -- within which the law will  
15 suggest, but not require, that your sentence be set.

16 Have you talked to your lawyer about these  
17 guidelines and gotten his advice about how he expects they're  
18 likely to affect your sentence?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Now, the prosecutor estimates that  
21 Judge Dearie will calculate your guideline range to be 151 to  
22 188 months long. I'm sure that estimate was made carefully  
23 and indeed we've seen a reflection of the care with which Ms.  
24 Demas has examined the sentencing guidelines in her  
25 explanations to you today.

1 But however carefully made it was, it's not binding  
2 on Judge Dearie. Judge Dearie is going to calculate the  
3 guidelines for himself. He's not going to do that until he  
4 receives a document that's labeled pre-sentence report. The  
5 report hasn't been written yet.

6 When it's ready, you and your lawyers and the  
7 prosecutor are all going to have a chance to read it. There  
8 will be a proceeding before Judge Dearie at you -- at which  
9 you and your lawyers will have the right to address the Court  
10 on a number of matters, including, but not limited to,  
11 anything in that report that you disagree with, think is  
12 wrong, inaccurate, or unfair. And only after hearing from  
13 everybody will Judge Dearie decide what your guideline range  
14 should be.

15 And it might be that he'll decide that an even  
16 longer guideline range than the one Ms. Demas predicts will  
17 be the one that the Judge decides applies. It's possible it  
18 could be shorter. It's possible it could be longer. Do you  
19 understand?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: Even after Judge Dearie calculates the  
22 guidelines, he will look to additional factors. He must by  
23 law look to additional factors and surrounding circumstances  
24 about you, your background, and your offense conduct before  
25 he decides upon the final sentence.

1           The guidelines are, as we call them, advisory.  
2           They provide the Judge with advice, but they are not binding.  
3           So even after Judge Dearie decides what your guideline range  
4           should be, he might decide that a sentence even longer than  
5           the guideline range he's calculated is the most appropriate  
6           one in your case. Do you understand me?

7           THE DEFENDANT: I do, Your Honor.

8           THE COURT: If you receive a prison term of 210  
9           months or less, you will have no right to take any appeal  
10          from any aspect of this case. Do you understand that?

11          THE DEFENDANT: I do, Your Honor.

12          THE COURT: Even if you're sentenced to prison for  
13          longer than that period of time, you will have no right to  
14          challenge your conviction or withdraw your guilty plea. The  
15          only right you would have in that event would be to challenge  
16          the length of the sentence you've received. Is that clear?

17          THE DEFENDANT: I do, Your Honor.

18          THE COURT: "I do" means it is clear?

19          THE DEFENDANT: I do. It is clear.

20          THE COURT: Okay. You may have heard of parole,  
21          which is a program of early release from a prison sentence.  
22          But it's a state court program. You're in federal court  
23          being sentenced by a federal judge to federal prison.  
24          There's no parole in the federal system. You won't be  
25          released early from your sentence on parole. Is that clear

1 to you?

2 THE DEFENDANT: Yes, it is, Your Honor.

3 THE COURT: Do you have any questions you want to  
4 ask me or discuss privately with your lawyer that you haven't  
5 asked already about your rights, the charges, the penalties  
6 you face, your plea agreement, or anything else?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Is everything I've told you today  
9 clear?

10 THE DEFENDANT: Yes, it is, Your Honor.

11 THE COURT: Are you ready to enter your plea?

12 THE DEFENDANT: Yes, I am, Your Honor.

13 THE COURT: Mr. Greco, do you know of any reason  
14 why your client should not tender the plea of guilty  
15 contemplated by his agreement?

16 MR. GRECO: I don't know of any reason, Judge.

17 THE COURT: Mr. Bonifaz, with respect to the charge  
18 against you in Count 1, in which you are accused of knowingly  
19 and intentionally persuading, enticing, inducing, or coercing  
20 a minor to engage in sexual activity at the Fort Hamilton  
21 Army Base, how do you plead? Guilty or not guilty.

22 THE DEFENDANT: Plead guilty, Your Honor.

23 THE COURT: Are you making this plea of guilty  
24 voluntarily and of your own free will?

25 THE DEFENDANT: Yes, I am, Your Honor.

1 THE COURT: Have you been threatened or forced or  
2 pressured into offering this guilty plea?

3 THE DEFENDANT: No, I have not, Your Honor.

4 THE COURT: Has anyone promised you anything that  
5 isn't written down in your plea agreement in return for your  
6 guilty plea?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Has anyone promised you anything about  
9 the sentence you will receive from Judge Dearie in return for  
10 your plea of guilty?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Ms. Demas, maybe in this case I'm going  
13 to ask what the government's proof would be if the case  
14 proceeded to trial.

15 MS. DEMAS: Sure, Your Honor. First, I'm just  
16 going to incorporate by reference the letter that was filed  
17 on October 30th, 2014, which sets forth the -- the basis.

18 But for the Court's purposes, the government's  
19 proof would be -- it would come in the form of the victim's  
20 testimony. There is also some corroborating evidence in the  
21 form of phone records and other things. But the evidence  
22 would be that the defendant, who knew Jane Doe 1 and Jane Doe  
23 1, as well as Jane Doe 2 and Jane Doe 3 -- sorry.

24 Let me back up for a second. Jane Doe 1 lived at  
25 the Fort Hamilton Army Base. Jane Doe 2 lived at the Fort

1 Hamilton Army Base. Jane Doe 3 did not. She lived nearby.  
2 However, the abuse took place at the Fort Hamilton Army Base  
3 at Jane Doe 1's house.

4 The government would prove, through testimony and  
5 evidence, that over a period of time, beginning in or around  
6 December of 2009, the defendant began to have a sexual  
7 relationship with Jane Doe 1. At that time Jane Doe 1 was 12  
8 years old. The defendant knew her because he worked with  
9 Jane Doe 1's mother. He had a trusting relationship with  
10 Jane Doe's mother. And he, therefore, had access to their  
11 house. He would frequently be over as a guest. Sometimes he  
12 would spend the night. Sometimes he would babysit for Jane  
13 Doe 1.

14 It was during these times, sometimes when the  
15 mother was home, but not aware of what was going on, or when  
16 the mother had left Jane Doe 1 to be watched by the defendant  
17 along with Jane Doe 1's younger siblings, that sexual  
18 activity took place.

19 And the government's proof would be that this  
20 sexual activity involved oral sex both of the defendant to  
21 Jane Doe 1, of Jane Doe 1 to the defendant, and sexual  
22 intercourse, which took place in 2010.

23 Now, my understanding is there are certain things  
24 that the defendant contends did not happen. For example,  
25 sexual intercourse or any contact with Jane Doe 2 and Jane



1 Doe 3.

2 For purposes of this plea, it doesn't matter. But  
3 the government's proof at trial would be testimony from Jane  
4 Doe 2 and Jane Doe 3 that the defendant did have sexual  
5 contact with them, that it happened at Jane Doe 1's house,  
6 and that it happened during the charged time frame when they  
7 were 12 and 13 years old.

8 THE COURT: Mr. Bonifaz, did you hear and  
9 understand everything the government said?

10 THE DEFENDANT: Yes, I do, Your Honor.

11 THE COURT: 2246. Were you stationed at the Fort  
12 Hamilton Army Base in 2009 and 2010?

13 THE DEFENDANT: I was -- I was invited as a guest  
14 by the mother at times. Yes, Your Honor.

15 THE COURT: Okay. So you spent time at the Fort  
16 Hamilton Army Base --

17 THE DEFENDANT: Yes, I did, Your Honor.

18 THE COURT: -- during that time period? And do you  
19 know who Ms. Demas is referring to when she uses the  
20 expression Jane Doe 1?

21 THE DEFENDANT: Yes, I do, Your Honor.

22 THE COURT: Did you have oral sex with Jane Doe 1  
23 during that time frame at the Fort Hamilton Army Base?

24 THE DEFENDANT: Yes, I did, Your Honor.

25 THE COURT: And was Jane Doe 1 between 12 and 16

1 years old at that time?

2 THE DEFENDANT: Yes, she was, Your Honor.

3 THE COURT: Were you over 20 years old at that  
4 time?

5 THE DEFENDANT: Yes, I was, Your Honor.

6 THE COURT: Is there anything further the  
7 government would have me inquire of the defendant?

8 MS. DEMAS: Your Honor, just to be careful for  
9 statutory purposes, I think it's covered by did you have oral  
10 sex? But because the statute says contact between the mouth  
11 and the vulva, I would just like him to specifically say that  
12 it was that type or the other type. It doesn't matter which  
13 one, but to specify.

14 THE COURT: Did your mouth have contact with her  
15 vulva?

16 THE DEFENDANT: Yes, it did, Your Honor.

17 THE COURT: Did her mouth have contact with your  
18 penis?

19 THE DEFENDANT: Yes, it did, Your Honor.

20 THE COURT: Is there anything further?

21 MS. DEMAS: We did discuss, Your Honor, the  
22 persuasion element. I'm not sure if the Court asked the  
23 defendant about that or if that's covered by an earlier  
24 discussion, but I just --

25 THE COURT: I assumed it was covered by the --

1 MS. DEMAS: Okay.

2 THE COURT: -- earlier discussion of the age  
3 difference.

4 MS. DEMAS: Okay.

5 THE COURT: Are you satisfied that the law is  
6 satisfied by that?

7 MS. DEMAS: I am. But I would be more satisfied if  
8 the defendant allocuted to persuading, because I think that  
9 that's a word that he would probably agree with. I think if  
10 one says to another person, hey, let's do this --

11 THE COURT: Was the sexual contact with Jane Doe  
12 your idea?

13 THE DEFENDANT: It was not, Your Honor.

14 THE COURT: Okay. Is the government satisfied with  
15 the allocution?

16 MS. DEMAS: Yes, Your Honor.

17 THE COURT: Based on the information given to me  
18 and accepting the representations of counsel that the age  
19 difference is sufficient to satisfy the statutory element of  
20 persuasion, I find that the defendant is acting voluntarily,  
21 fully understands his rights and the consequences of his  
22 plea, and that his plea has a factual basis.

23 And I, therefore, recommend that Judge Dearie  
24 accept the defendant's plea of guilty to Count 1 of the  
25 indictment.

1 I don't think I have a proposed sentencing -- yes,  
2 I do. Judge Dearie has scheduled the sentencing of this case  
3 for July 31st at 10:00 a.m. Between now and then, Mr.  
4 Bonifaz, you're going to be interviewed by a probation  
5 officer.

6 The probation officer is going to ask the questions  
7 and conduct the investigation that's necessary to prepare the  
8 pre-sentence report that I told you Judge Dearie will rely  
9 upon when he decides what your sentence should be.

10 It's very important that you be candid and  
11 cooperative with the probation officer during the interview.

12 THE DEFENDANT: I understand, Your Honor.

13 THE COURT: And if there are factual disputes,  
14 there will be an evidentiary hearing, I imagine, that  
15 attempts to resolve them. Is there anything further from the  
16 government?

17 MS. DEMAS: No, Your Honor. Thank you.

18 THE COURT: Anything further from the defendant,  
19 Mr. Greco?

20 MR. GRECO: Nothing further from the defense,  
21 Judge.

22 THE COURT: Thank you, everybody.

23 MS. DEMAS: Thank you, Your Honor.

24 (Proceedings concluded at 3:37 p.m.)  
25

1 I, CHRISTINE FIORE, Certified Electronic Reporter and  
2 Transcriber, certify that the foregoing is a correct  
3 transcript from the official electronic sound recording of  
4 the proceedings in the above-entitled matter.

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7 \_\_\_\_\_ April 20, 2015

8 Christine Fiore, CERT  
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